

22 March 2011

**MEMORANDUM**

**FROM:** Jim Shockley

**TO:** House Judiciary Committee

**SUBJECT:** SB 217

**1. This bill is about two issues:**

A. Ensuring that a person, or entity, using the state courts to obtain access to records or meetings that the law and Constitution allow may have his attorney fees paid if he is right. There is currently no doubt that under the 2-3-221, MCA, that the prevailing party may receive attorney's fees. There is some concern that the opportunity to recover fees is limited to district court and not appeals to the supreme court.

B. There is another way to approach the issue of access to public records and is used sometimes, 44-5-303(5). It is a declaratory action where the plaintiff asks a court to "declare" the legality, or illegality, of releasing criminal justice information to the public. Neither party receives fees. When criminal justice information is requested the county attorney often takes this course of action to limit the county's exposure to fees, and liability.

2. The proponents of the bill say that without an attorney an individual cannot normally afford to make public officials obey the law. The argument of the opponents is that if fees are given to the public it will unfairly burden the taxpayers with an expense.

3. My response is that the proponents are right, and that the opponents have an argument with no merit. The entity, or person, trying to get information that the law allows is also a taxpayer and has a right to have his fees. However, the idea that the wrong doers (perhaps the county) have a right to say it costs too much to make them obey the law is disingenuous. The remedy

for their wrong doing, which costs the taxpayers money, is to remove them from office at the earliest opportunity.

4. If a media organization is involved they are doing the public's work and should be compensated for it, the wrongdoer is still the government officials who act outside their authority. The press is over zealous at times, but I trust the press more than the government.

5. There are two recent matters, both on going, that are relevant to this discussion.

A. I helped procure an attorney to help the citizens of Helena to sue their school board to find out how and why sex education for K-12 was came to be. This is still being litigated to get copies of the relevant documents.

B. I have been in Cascade County since last April trying to get two things:

1) the agreement between the MACO and Local Number 2 of the International Brotherhood of Teamsters;

2) the confidential law enforcement information related to a "tazzing" of a detainee in the Cascade County Detention Facility.

In December the judge told the County I had a right to the confidential law enforcement information. I am still fighting over the Confidential Settlement. MACO and the Union maintain that the supposed \$18,000 (and other benefits that I am not aware) the fired detention officer received upon discharge are none of my business, nor any other taxpayer.

6. I hope that this bill pass to the floor, unamended, to ensure that people with even less expertise in the law than I have can gain the access to what their public officials are doing. Without hiring a lawyer and getting your fees it is not practicable for the average person to do so.

**Jim Shockley**